dangerous part of the machine. The question is whether or not the ram becomes a dangerous part of the machine when the machine is in normal operation. I think not because in my opinion the ram does not undoubtedly become dangerous when the machine is in normal operation performing the mechanical work which the machine is specifically designed to achieve. I come to this conclusion adopting the words of Lord Evershed (dealing with a different problem from the present case) in *Midland and Low Moor Iron and Steel Co., Ltd.* v. *Cross*[2], where he said:

"As it seems to me, the question whether it can properly be said that some part of a piece of machinery is dangerous must depend on considering whether such danger exists and arises from the normal operation of the machine, that is, from the purposes of the mechanical work which the machine is specifically designed to achieve; and if such a part becomes undoubtedly dangerous from such normal and projected operation, then it follows that such part of the machine is a dangerous part within the meaning of section 14(1)".

However much I sympathise with the first plaintiff for the serious and permanent injury he has suffered as a result of this accident, I am of the opinion that the defendants are not in law responsible for the accident and accordingly the claim is dismissed with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.; Drew & Napier.*

PUBLIC PROSECUTOR v. GURSEVAR SINGH & ANOR.

[A.Cr.J. (Chua J.) October 19, 1970]

[Singapore — Magistrate's Appeal No. 95 of 1970]

Criminal Law and Procedure — Sentence — Public interest — Inadequacy of sentence.

Penal Code, s. 379 — Theft of plants from public garden — Sentence.

The accused had been convicted of three offences of theft of plants belonging to the Public Works Department and were fined $50 on each charge. The value of the plants on the first charge was $10, on the second charge $6 and on the third charge $50. The Public Prosecutor appealed alleging that the sentences were inadequate.

Held: the learned magistrate in deciding to be lenient to the respondents had failed to consider the public interest, which should be the first and foremost consideration. The sentences in this case were manifestly inadequate and must be increased to $100 on the first charge, $100 on the second charge and $200 on the third charge.

Case referred to:-

(1) *R.* v. *Ball* (1951), 35 Cr. App. R. 164 at p. 165.

MAGISTRATE'S CRIMINAL APPEAL.

Isaac Paul Retnam (Deputy Public Prosecutor) for the appellant.

David Marshall for the respondent.

Chua J.: This is an appeal by the Public Prosecutor against the sentences imposed by a magistrate on the two respondents on conviction for three offences of theft of plants punishable under section 379 of the Penal Code read with section 34 of the Penal Code. The value of the plants on the first charge was $10, on the second charge $6 and on the third charge $50. Each respondent was fined $50 on each charge.

At the trial the respondents were represented by counsel and they pleaded guilty to the three charges. The brief facts given by the prosecution, as recorded by the magistrate, were as follows:

"Complainant is P.C. 8851 attached to R.W. Division. On 15.5.70 at 11 p.m. to 16th May at 7 a.m. complainant and another police officer were placed on static duty at Woodlands Road 12½ m/s. to keep observation of plants planted by P.W.D.

On 16.5.70 at 1.20 a.m. the two police officers saw 2 persons in a motor car SK. 9185 driven slowly at Woodlands 12½ m/s. Driver was accused No. 2. Accused No. 1 was the passenger. The police officers saw the car stopping by the side of road divider near some plants.

First accused got down from the car and seen pulling out an Arancasia plant from the road divider. Police approached and arrested him. Second accused saw this and drove off. The police officers with assistance of a member of public drove towards Bukit Panjang police station. On their way, they saw motor car SK 9185 parked by the side of the road. They saw second accused throwing out some plants from the vehicle.

Attempts were made by the police officers to stop the car. She drove off. Whilst driving away she was seen to be throwing away some more plants.

At Bukit Panjang police station, the police officers reported.

A short while later, second accused surrendered. The car was examined and found to contain mud and sand at the rear seat.

Police investigations started. They went to 12½ m/s. Woodlands where they discovered 5 Acalypha Wilkesiana plants, 3 Dieffen Bachia Rudolf Roehrs plants.

Both accused subsequently led police to Holland Road in front of G.H.Q. Tanglin where they pointed out 2 empty flower pots where 5 Acalypha Wilkesiana plants were stolen. They also took the police to Cluny Road in front of Botanical Gardens and pointed out 3 empty pots where the 3 Dieffen Bachia Rudolf Roehrs plants were stolen.

All the plants belonged to P.W.D. Both accused subsequently admitted in their cautioned statements the theft of the plants."

The facts given were admitted by the two respondents and they were convicted on all the three charges.

Counsel for the respondents addressed the court in mitigation. The record of the magistrate reads:

"*Mitigation: Mr. Advani on behalf:*

The man and his fiancee shortly to be married. First accused is a flight engineer. They had just acquired a home to be matrimonial home. They did this on spur of the moment. They had been co-operative after arrests. I don't know the future of my clients. Your honour can guess.

My clients say they are prepared to make restitution for full value of the plants if any are damaged. I invite your honour to take into account there are 3 counts. They are not criminals but just stupid."

The magistrate fined each of the respondent $50 on each charge. At the request of the prosecution, the magistrate ordered the car seized by the police to be returned to the second respondent.

The magistrate in his grounds of decision gave his reasons for passing those sentences.

The magistrate said:

"I was aware that the offence of theft of public property is a serious one. On the other hand there were several

mitigating factors which had induced me to be lenient with the accused. It was shown by the facts and through the plea of mitigation that the accused had been co-operative after their arrests. Their plea of guilt and their offer of making good any damage they had caused to the flowers showed that they realised that their act was wrong. In any case, a record of conviction against the first accused who is a flight engineer is sufficient punishment in itself in view of his profession and background. Furthermore, the prosecution requested that the motor-car be returned to the second accused.

In the circumstances, I imposed a fiine of $50 on each charge which I felt was adequate and hoped that they had learnt a lesson from their foolish act."

At the hearing of the appeal written factual submissions on behalf of the two respondents were put before the court. In these submissions the personal history of the respondents were given and the events of the 15th May, 1970, were set out and the respondents gave the reasons why they were driving around at 1.20 a.m. and the circumstances under which they committed these offences.

[The learned judge then summarised these submissions, which for purposes of this report are omitted, and continued:]

It is an established principle that an appellate court will not enhance a sentence unless it is manifestly inadequate or wrong in principle.

The object of punishment is stated by the learned editors of *Halsbury's* Laws of England (in Vol. 10 3rd Ed. at p. 487 para. 889) as follows: —

"The object of punishment is the prevention of crime, and every punishment is intended to have a double effect, namely, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes.

As regards the particular offender there are three ways of providing by punishment against the recurrence of an offence: (1) by taking from him the power of offending (incapacitation); (2) by taking away the desire of offending (reformation); (3) by making him afraid of offending (intimidation).

In some cases, besides providing for the prevention of crimes in future, punishment may also include reparation for the past injury by ordering the offender to compensate the person injured.

As regards other members of the community who are disposed to commit similar offences, the only way of providing by punishment against the commission of the offence is by the deterrent effect which the punishment of an individual has upon others."

In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost consideration is the public interest. Hilbery J. in *R.* v. *Ball*[1] said:

"The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living."

The maximum punishment for an offence of theft under section 379 of the Penal Code is imprisonment for a term which may extend to three years or a fine or both.

I agree with the magistrate that the offence of theft of public property is a serious one. Taking all the facts and circumstances of the case into consideration I do not consider that a sentence of imprisonment is called for in this case.

The magistrate in deciding to be lenient with the respondents has failed to consider the public interest which is, as I have said, the first and foremost consideration. He has allowed certain considerations, namely (1) that a record of conviction against the first respondent is sufficient punishment in itself in view of the first respondent's profession and background and (2) that the prosecution had requested that the motor car be returned to the second respondent, to weigh with him which should not rightly have been brought into consideration in this matter. Furthermore he has failed to take into consideration the financial position of the respondents.

The record shows that police officers were placed on static duty at Woodlands Road to keep watch over the plants, a measure no doubt necessitated by the frequent theft of plants there.

The respondents have submitted that there was no consciousness on their part when they picked the plants that that was theft. This I cannot accept. People with a good education like the respondents must surely know that that was theft. It was not from ignorance that the respondents had committed these offences.

Again it is submitted that consideration should be given to the possibility of the first respondent losing his job with the Malaysia-Singapore Airlines. I am clearly of the view that the sentence ought to reflect the opinion of the court on the offence proved in the circumstances and the court ought not to take into account the possible or even the certain dismissal of the first respondent.

I am of the view that a fine of $50 on each charge in this case is manifestly inadequate. The fine is so low that the respondents would not feel the punishment and it would not serve as a salutary lesson to them and would not deter others from committing a similar offence.

Regard must be had to the costly effort by the Government to make Singapore a garden city. Many plants planted by the Government to beautify the State will disappear if people like the respondents could get away with a lenient sentence when they steal plants from public gardens to plant them in their own gardens. Plants can easily and cheaply be bought from the Botanical Gardens and from the very many flower gardens and there was no need for the respondents to steal them from the road side. The action of the respondents was disgraceful.

For these reasons I allow the appeal and enhance the sentence by increasing the fine to a fine, against each of the respondents, of $100 on the first charge in default 2 weeks imprisonment, $100 on the second charge in default 2 weeks imprisonment, and $200 on the third charge in default 1 month imprisonment.

Appeal allowed. Sentence enhanced.

Solicitors: *David Marshall.*